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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

ADMINISTRATIVE LAW JUDGE'S RULING (1) ACCEPTING INTO THE RECORD THE ENERGY DIVISION STAFF PROPOSAL TO IMPLEMENT GOVERNOR'S EMERGENCY PROCLAMATION ON TREE MORTALITY BY MAKING TARGETED CHANGES TO THE BIOENERGY MARKET ADJUSTING TARIFF PROGRAM TO FACILITATE CONTRACTS WITH FACILITIES USING FUEL FROM HIGH HAZARD ZONES AND (2) SEEKING COMMENT ON STAFF PROPOSAL

1. Staff Proposal

On February 12, 2016, Energy Division staff issued a Staff Proposal to Implement Governor's Emergency Proclamation on Tree Mortality by Making Targeted Changes to the Bioenergy Market Adjusting Tariff (BioMAT) Program to Facilitate Contracts with Facilities Using Fuel from High Hazard Zones (Staff Proposal).¹ The Staff Proposal, attached to this ruling as Attachment A, is one step in the implementation of those aspects of the Emergency Proclamation that relate to the renewables portfolio standard (RPS) program. (*See Amended Scoping Memo and Ruling of Assigned Commissioner* (February 5, 2016) at 9.) The Staff Proposal should therefore be accepted into the record of this proceeding.

¹ The Emergency Proclamation may be found at www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf.

2. Comments

Parties are asked to comment on the staff proposal, responding to the questions set forth in this ruling and providing any additional comments they deem necessary, in accordance with the guidance provided below.

Comments should respond to the staff proposal and the questions posed in this ruling. Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. All comments should use publicly available materials (for example, the public description of a transaction in a resolution adopted by the Commission). All comments should specifically identify, with respect to each question, whether the potential sources of information addressed in the response to the question are public or confidential. If both public and confidential sources of information are identified, the comments should clearly identify which are public and which are confidential.

Parties may identify and comment on issues that are not addressed in the Staff Proposal or the questions below. Commenters doing so should clearly identify and explain the relevance of the additional issue(s).

Comments of not more than 30 pages may be filed and served not later than February 26, 2016. Reply comments of not more than 20 pages may be filed and served not later than March 7, 2016.

3. Questions for Comments

The following questions are intended to guide parties in providing comments. Please identify the particular question or questions, if any, to which a comment responds. A response may address several questions, so long as all the questions in the group are clearly identified. If a comment does not respond to a question, but rather to an element of the staff proposal directly, please identify the specific part of the staff proposal that is being addressed. It is not necessary

to reproduce either the question or the section of the staff proposal, so long as it is clear what question or section the comment addresses and the specific question or section is identified.(e.g., “section 3 of the staff proposal”).

Fuel from high hazard zones:

1. Is the proposed definition of “high hazard zones,” including the graphic representation in the map viewer (<http://www.fire.ca.gov/treetaskforce>) sufficiently specific for purposes of entering into BioMAT contracts? If yes, please explain the value of the proposed definition, including the map. If not, please:
 - a. Identify with particularity the elements that you think are insufficient for the purposes of BioMAT contracting;
 - b. Specify a process based on the information available for implementing the Emergency Proclamation that could serve as a basis for supporting BioMAT contracting.
2. With respect to the map viewer cited above, does the current information in the map provide a reasonable and effective basis to implement contractually enforceable procurement of generation for the use of fuel in high hazard zones? If yes, please explain how the map information would support contractually enforceable procurement. If not, please:
 - a. Identify with particularity what changes or additional elements could improve the utility of the map;
 - b. Propose a method for updating or checking on the necessary elements of the map over time.

Adjustments to the available BioMAT price

With respect to each option for adjustments to the price (\$40/MWh surcharge and \$160/MWh price with conditions), please respond to the following questions for each option. Clearly indicate which option is being discussed.

3. Identify the strengths and weaknesses of each proposal with particularity. Use quantitative examples if relevant.

4. Identify your preferred pricing alternative of the two presented in the Staff Proposal. Provide a detailed rationale for your preference, including quantitative examples if relevant.
5. If you think the pricing alternatives in the Staff Proposal are not appropriate, provide an alternative pricing proposal. Provide a detailed rationale for your alternative, including quantitative examples if relevant.
6. Should the Commission allow generation facilities that would use fuel from high hazard zones to enter into fuel delivery agreements with IOUs that are analogous to the tolling agreements for natural-gas fueled facilities? In such "high hazard zone fuel tolling agreements," the generation facility would receive the BioMAT starting price of \$127.72/MWh and the IOU would deliver fuel from high hazard zones, for the duration of the tree mortality emergency.

Administrative issues

7. Should the length of BioMAT contracts using fuel from high hazard zones be limited? Why or why not? Please include analysis of the merits of your proposal for the generation facility, the IOU, and ratepayers.
8. The Staff Proposal suggests that the options of the \$40/MWh surcharge and the \$160/MWh price with conditions be available for BioMAT contracts for a period of 24 months from the time the Commission approves these options. Is this an appropriate length of time to allow for generators and utilities to enter into contracts on those terms? Why or why not? Please provide a detailed explanation for any other time period you think is more appropriate.
9. How should the use of fuel from high hazard zones be verified? Please provide a detailed explanation of your

proposed process, keeping in mind the process set out in Ordering Paragraph (OP) 7 of Decision (D.)14-12-081.²

Alternatives and contingencies

10. What other programmatic changes to the BioMAT program, if any, might be required in order to implement the Emergency Proclamation? Provide specific examples and reasoning. If new language would be required for the BioMAT tariff or contract, please provide proposed language.
11. Should an approach different from the options in the Staff Proposal be taken to implementing the Emergency Proclamation in the BioMAT program? If yes, please provide a detailed alternative proposal, with reasons for each element in your proposal, and quantitative examples if relevant.
12. How should the possibility that fuel from high hazard zones might be exhausted before the end of the contractual term be handled? If relevant, propose specific language to cover this eventuality.
13. How should the possibility that the state agencies identified in the first ordering paragraph of the Emergency Proclamation might cease to designate high hazard zones before the end of the contractual term be handled? If relevant, propose specific language to cover this eventuality.
14. How should the possibility that the governor might terminate the state of emergency declared in the

² OP 7 provides:

The Director of Energy Division is directed to take appropriate steps, commencing not later than six months after the beginning of the first program period, including but not limited to holding a workshop, to explore possible standards and format for third-party verification of fuel sources use by generators participating in the bioenergy feed-in tariff pursuant to Public Utilities Code Section 399.20.

Emergency Proclamation before the end of the contractual term be handled? If relevant, propose specific language to cover this eventuality.

4. Additional issues

It is possible that, in its implementation of the Emergency Proclamation, the Commission may modify D.14-12-081 and/or D.15-09-004 in part. In view of this possibility, this Ruling and the attached Staff Proposal should be served on the service lists both of this proceeding and of Rulemaking 11-05-005, the proceeding in which D.14-12-081 was issued.

IT IS RULED that:

1. The Staff Proposal to Implement Governor's Emergency Proclamation on Tree Mortality by Making Targeted Changes to the BioMAT Program to Facilitate Contracts with Facilities Using Fuel from High Hazard Zones (Staff Proposal) is admitted into the record of this proceeding.
2. Comments of not more than 30 pages on the Staff Proposal may be filed and served not later than February 26, 2016.
3. Reply comments of not more than 20 pages may be filed and served not later than March 7, 2016.
4. This ruling must be served on the service lists both of this proceeding and of Rulemaking 11-05-005.

Dated February 12, 2016, at San Francisco, California.

/s/ ANNE E. SIMON
Anne E. Simon
Administrative Law Judge

ATTACHMENT A

**Energy Division Staff Proposal to Implement Governor's Emergency
Proclamation on Tree Mortality by Making Targeted Changes to the
BioMAT program to Facilitate Contracts with Facilities using Fuel from
High Hazard Zones**

ATTACHMENT A

Energy Division Staff Proposal to Implement Governor's Emergency Proclamation on Tree Mortality by Making Targeted Changes to the BioMAT program to Facilitate Contracts with Facilities using Fuel from High Hazard Zones

1. Summary

On October 30, 2015, Governor Brown issued an Emergency Proclamation³ to enhance public safety and protect public property from falling dead trees and wildfire (Proclamation). The objective of this staff proposal is to recommend changes to the current California Public Utilities Commission (Commission) approved Bioenergy Market Adjusting Tariff (BioMAT) program to facilitate contracts for bioenergy facilities that can use fuel from high hazard zones pursuant to the Proclamation.

This proposal recommends the following changes to the current BioMAT program:

- Modify the definition of *sustainable forest biomass*⁴ to include “fuel from high hazard zones.”
- Modify the BioMAT interconnection requirements to clarify that facilities must maintain an active interconnection queue number to participate in BioMAT.
- Require Pacific Gas and Electric, San Diego Gas & Electric, and Southern California Edison to pay a premium, above the currently available BioMAT price, for BioMAT projects that utilize fuel from high hazard zones.

2. Background

Overview of BioMAT

The BioMAT program, which implements Senate Bill (SB) 1122 (Rubio), Stats. 2012, ch. 612, requires the three large investor-owned electric utilities (IOUs) to procure 250 megawatts (MW) of generation eligible under procurement rules of the renewables portfolio standard (RPS) program from bioenergy facilities sized 3 MW or less. The BioMAT program is available until February 2021, unless the allocated capacity is exhausted prior to that time.⁵

³ https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf

⁴ BioMAT Category 3

⁵ The Commission implemented SB 1122 in Decision (D.)14-12-081 and D.15-09-004.

The BioMAT contract price starts at \$127.72/MWh in Period 1 (commencing February 2016). Once a contract is executed, the price is fixed over the contract delivery term. The available BioMAT price has the potential to adjust every 2 months based on the number of developers in the program queue and whether a developer accepts a contract at the available price.

Overview of Emergency Proclamation

Severe drought conditions and an epidemic infestation of bark beetles have caused increased tree mortality in several regions of California, leading to an estimated 22 million dead trees in 2015.

Ordering Paragraph 1 of the Proclamation requires the Department of Forestry and Fire Protection (CAL FIRE), the California Natural Resources Agency, Caltrans, and the California Energy Commission to immediately identify “high hazard zones for wildfire and falling trees.”

The Proclamation’s orders are intended to address certain safety and wildfire risks. The Proclamation orders the Commission to:

1. Use its authority to extend contracts for existing forest bioenergy facilities receiving feedstock from high hazard zones. (Ordering Paragraph 8 of the Proclamation)
2. Take expedited action to ensure that contracts for new forest bioenergy facilities that receive feedstock from high hazard zones can be executed within six months, including initiation of a targeted Renewable Auction Mechanism and consideration of adjustments to the BioMAT program. (Ordering Paragraph 9 of the Proclamation)
3. Prioritize facilitation of interconnection agreements for forest bioenergy facilities in high hazard zones, and shall order the use of expedited mediation or other alternative dispute resolution processes when conflicts cause development delays. (Ordering Paragraph 10 of the Proclamation)

3. High hazard zones

Ordering Paragraph 1 of the Proclamation directs “the Department of Forestry and Fire Protection, the California Natural Resources Agency, Caltrans, and the California Energy Commission to immediately identify areas of California that represent high hazard zones for wildfire and falling trees using best available science and geospatial data.”

The agencies have not issued a formal definition of high hazard zones, though they have developed a mapping process to identify high hazard zones. The map viewer is accessible through the Tree Mortality Task Force web site. The high hazard zone layer can be displayed on this viewer along with tree mortality and other GIS data. It will be updated periodically throughout the project to incorporate updated information on tree mortality and assets. The map viewer may be found at <http://www.fire.ca.gov/treetaskforce>.⁶

4. Addition of “Projects using fuel from high hazard zones” to BioMAT Category 3

SB 1122 identifies three broad categories of bioenergy resources, which include multiple elements within them. Public Utilities Code Section 399.20(f)(2)(A) sets out the categories:

1. Category 1: Biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion;
2. Category 2: Dairy and other agricultural bioenergy;
3. Category 3: Bioenergy using byproducts of sustainable forest management.

D.14-12-081 specifies in detail the types of activities that support eligibility of fuel sources under SB 1122. The four types of activities that support the use of bioenergy feedstock under Category 3 (byproducts of sustainable forest management) include:

1. Fire threat reduction⁷
2. Fire safe clearance activities⁸
3. Infrastructure clearance projects⁹
4. Other sustainable forest management¹⁰

⁶ For purposes of this Staff Proposal, high hazard zones under the Emergency Proclamation can be defined as areas where public safety or critical infrastructure are potentially threatened by dead or dying trees, pursuant to the Emergency Proclamation.

⁷ D. 14-12-081, Section 2.2.3.1

⁸ D. 14-12-081, Section 2.2.3.2

⁹ D. 14-12-081, Section 2.2.3.3

¹⁰ D. 14-12-081, Section 2.2.3.4

D.14-12-081 is specific regarding the description of each activity listed above. Staff proposes to add, “Projects using fuel from high hazard zones” to the list of activities that comprise “Bioenergy using byproducts of sustainable forest management.” This step will ensure that projects using fuel from high hazard zones can participate in Category 3, if they are not already covered under the current list of activities.

5. Clarification of Interconnection Requirements for BioMAT

The current BioMAT tariff ¹¹ implements the renewable bioenergy resource feed-in tariff program pursuant to Section 399.20, D.14-12-081, and D.15-09-004. Among other things, the tariff includes developer eligibility criteria for BioMAT, including interconnection eligibility requirements.

All projects must connect at the IOU’s distribution system through the Commission-approved Rule 21 tariff or the FERC-approved Wholesale Distribution Access Tariff (WDAT) studies and agreements. The current approved BioMAT tariff defines the interconnection-related eligibility as follows:

An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an [IOU]’s System Impact Study in the Independent Study Process, completed an [IOU] Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an [IOU] Phase 1 Study in the Cluster Study Process for its Project (Interconnection Study), or make use of an existing interconnection agreement to the extent permitted by [IOU]’s tariff.

It has come to staff’s attention that there is some confusion regarding the current tariff, with some market participants interpreting the BioMAT tariff as meaning that a facility must only have a completed System Impact Study to be eligible for BioMAT, but it is not necessary to have an active position in the interconnection queue. No Commission decision in any proceeding (specifically, Rule 21 and RPS), has indicated that the interconnection requirements and criteria would be different for bioenergy projects. The expectation is that bioenergy projects connect to the distribution system in a manner consistent with current procedure already vetted and applied in Rule 21 and the WDAT.

¹¹ On September 22, 2015, the Commission issued D.15-09-004, approving with modifications the BioMAT draft tariff, standard contract, and certain ancillary documents submitted by the IOUs. Pursuant to D.15-09-004, the IOUs submitted Tier 2 Advice Letters with the final standard contract, tariff, and ancillary documents, which the Commission approved on November 12, 2015.

In order to avoid conflict, as directed in the Proclamation, this proposal intends to clarify the interconnection-related criteria in the BioMAT tariff must align with Rule 21 tariff and WDAT tariff.

As part of the Commission approved interconnection process, the Distribution Provider (the IOU) assigns a “queue position” to a facility based upon the date- and time-stamp of the interconnection request. The queue position of each interconnection request is used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection. At the applicant’s request and Distribution Provider's option, interconnection requests may be studied serially or in clusters (as part of the Distribution Group Study Process) for the purpose of the System Impact Study.

Pursuant to the Rule 21 and WDAT tariffs, it is the responsibility of the applicant to maintain an active queue position by fulfilling the requirements of the interconnection process. Maintaining a queue position in the interconnection process is essential for various reasons, including:

- Facilities are required to go through requisite studies and pay required financial postings to maintain an active queue position. Otherwise, developers could fill the interconnection queue with non-viable projects. Additionally, Rule 21¹² and WDAT¹³ tariffs clearly define that facilities can lose their status in the queue by not paying the requisite financial posting.

¹² Rule 21 Section F.3.b (iv):

Initial Posting of Interconnection Financial Security. Applicant shall make its initial posting of Interconnection Financial Security in accordance with the requirements of Section F.4.b, within sixty (60) Calendar Days after issuance of the final Interconnection System Impact Study report, or its Interconnection Request shall be deemed withdrawn. The initial posting of Interconnection Financial Security will be based on the cost responsibility for Network Upgrades, Distribution Upgrades, and Distribution Provider’s Interconnection Facilities set forth in the final Interconnection System Impact Study report.

¹³WDAT Section 2.2.2:

For Interconnection Requests that pass Initial Review but do require Interconnection Facilities or Distribution Upgrades, within fifteen (15) Business Days of providing notice of Initial Review results, Distribution Provider shall provide Interconnection Customer with a non-binding cost estimate of the Interconnection Facilities or Distribution Upgrades. Following the receipt of a cost estimate for any Distribution Upgrades and/or Interconnection Facilities that have been identified, Interconnection Customer shall notify Distribution Provider within fifteen (15) Business Days whether Interconnection Customer:

Footnote continued on next page

- In the Independent Study Process (Rule 21 and WDAT), projects are studied serially. Consequently, if a developer opts out of the queue, it passes on upgrade costs to the next project in the queue. Therefore, it is essential that developers pay the requisite financial postings and go through the specified studies to maintain the validity and effectiveness of the FERC and Commission approved interconnections processes.
- A System Impact Study is an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of the distribution and/or transmission system. Only facilities that are active in the queue are included in the studies. Due to ever changing grid conditions, it is imperative that these studies be current and include all facilities that plan to interconnect. Outdated and incomplete studies can lead to threats to system reliability and costly maintenance.

Staff proposes to add clarifying language to the BioMAT tariff to specify that a facility must maintain an active queue position and have passed specified studies or screens in the interconnection process (Fast track screens, Phase I interconnection study, System Impact Study) to be eligible for BioMAT and remain in the BioMAT queue.¹⁴

Specifically, the proposed modification (*in italics*) to Section 5 of the BioMAT tariff is as follows:

An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an (IOU) System Impact Study in the Independent Study Process, completed an (IOU) Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an (IOU) Phase 1 Study in the Cluster Study Process for its Project (Interconnection Study), or make use of an existing interconnection agreement to the extent permitted by (IOU's) tariff. *Applicants must maintain an active interconnection queue number.*

(i) requests a GIA, or (ii) withdraws its Interconnection Request. Interconnection Customer may request one extension of no more than fifteen (15) Business Days to respond. If Interconnection Customer fails to notify Distribution Provider within fifteen (15) Business Days, or at the end of the extension, if one was requested, the Interconnection Request shall be deemed withdrawn. If Interconnection Customer elects to proceed to the Generator Interconnection Agreement, Distribution Provider shall tender a draft GIA, together with draft appendices, within fifteen (15) Business Days of Interconnection Customer's request.

¹⁴ These requirements help to ensure that the facility will meet the BioMAT requirement of being online within 24 months of signing a contract.

The above language clarifies and makes explicit the existing requirement that BioMAT applicants must follow the interconnection requirements specified in the Rule 21 and WDAT tariffs.

6. Adjustments to the available BioMAT Price

The Proclamation orders the Commission to “consider adjustments to BioMAT to enable contracts with facilities receiving feedstock from high hazard areas.” In response to the Proclamation, staff proposes two options for IOUs to pay a premium (surcharge), above the available BioMAT price, for BioMAT projects that utilize fuel from high hazard zones as defined in Section 3.

Option 1:

- **Price:** Projects eligible under BioMAT Category 3 will receive a \$40/MWh surcharge on the BioMAT starting price of \$127.72/MWh for using fuel from high hazard zones. This would bring the PPA price for facilities procuring fuel from high hazard zones to \$167.72/MWh.
- **Fuel Requirement:** For facilities to qualify for the surcharge, 100% of fuel use must be from a BioMAT- eligible fuel resource category, with at least 80% of the fuel from high hazard zones. Facilities can use the surcharge as long as they can meet the fuel requirement conditions.
- **Fuel Substitution:** Facilities receiving the surcharge must have 80% of their fuel originating from high hazard areas, but can switch to other fuel listed in Category 3. Switching categories will lead to loss of the \$40/ MWh surcharge, with the price reverting to \$127.72/MWh for the remainder of the contract, beginning in the month following the month in which the generation facility makes the fuel change and notifies the IOU of the switch.
- If the state agencies responsible for designating high hazard zones declare an end to the designation, the generation facility may switch to other fuel listed in Category 3 and the price will revert to \$127.72/MWh beginning in the month following the month in which the generation facility makes the change to fuel and notifies the IOU of the switch.
- **Availability of surcharge:** The surcharge option will be available for BioMAT contracts for a period of 24 months from the time the Commission approves this option for use in BioMAT contracts.
- All other rules established in D.14-12-081 and D.15-09-004 continue to apply.

Option 2:

- **Price:** Projects utilizing fuel from high hazard areas can receive a fixed price of \$ 160/MWh for the duration of the contract, if certain conditions are met.

- **Fuel Requirement:** 100% of fuel use must be from a BioMAT-eligible fuel resource category with at least 80% of the fuel from high hazard zones.

Facilities must maintain the requirement of 80% fuel from high hazard zones for at least the first half of the duration of the contract. (For example, if the contract is for 15 years, 80% of fuel must be from high hazard zones for a minimum of the first 7.5 years.) For the remaining half, they may continue to use fuel from high hazard zones, or 80% of other fuel listed in Category 3.

- If the generation facility no longer uses at least 80% fuel from high hazard zones prior to the expiration of the first half of the duration of the contract, the price will revert to \$127.72/MWh for the remainder of the contract, beginning in the month following the month in which the generation facility makes the change to fuel and notifies the IOU of the switch.
- If the state agencies responsible for designating high hazard zones declare an end to the designation, the generation facility may switch to other fuel listed in Category 3 and the price will revert to \$127.72/MWh, beginning in the month following the month in which the generation facility makes the change to fuel and notifies the IOU of the switch.
- **Price Availability:** The special price with conditions will be available for BioMAT contracts for a period of 24 months from the time the Commission approves this option for use in BioMAT contracts.
- All other rules established in D.14-12-081 and D.15-09-004 continue to apply.

(END OF ATTACHMENT A)